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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Defining Primary Lines | ) | CC Docket No. 97-181 |

# COMMENTS

**BELLSOUTH CORPORATION**
**BELLSOUTH TELECOMMUNICATIONS, INC.**

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## SUMMARY

At the outset, it must be recognized that irrespective of how quickly the Commission concludes this proceeding, the definition of primary line cannot be implemented on January 1, 1998. BellSouth and other ILECs will need at least six months after the release of the order in which to complete all the necessary implementation steps. In these circumstances and in order to avoid the substantial customer confusion that is likely to occur, BellSouth believes that the Commission should delay the implementation of the higher subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) for non-primary residential lines until six months following completion of this proceeding.

With regard to the definition of primary line, the overarching principle of the primary line definition should be that the definition is workable in a multi-carrier environment. To that end, BellSouth has set forth a definition that can be implemented and administered in a manner that is consistent with the competitive marketplace. Primary residential lines should be defined as local exchange services that are classified as residential in a local exchange tariff. Further, each subscriber at a serving address would be able to obtain a primary line. The definition of primary line would be administered on a telephone company by telephone company basis. Thus, each telephone company providing residential service to a subscriber at a serving location could provide a primary line to that subscriber at that serving location.

The definition suggested by BellSouth has two significant attributes: (1) it can be administered by the ILEC and (2) it minimizes artificial arbitrage opportunities that might otherwise arise. Further, BellSouth's proposed definition would eliminate the need for customer

certifications and the associated complexities that such certifications would create. The new access charge rules, which are dependent on the definition, could be implemented by the ILEC based on information that is maintained and available in ILEC records. Accordingly, privacy and verification issues that arise with alternative definitions do not apply. For these reasons, the Commission should adopt BellSouth's primary line definition.

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## COMMENTS

BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") hereby submit their comments on the Notice of Proposed Rulemaking ("*Notice*") released on September 4, 1997 in the above referenced matter.[1]

## I. INTRODUCTION

In the *Access Charge Reform Order*,[2] the Commission adjusted the cap on subscriber line charges for business lines and additional residential lines. The *Access Charge Reform Order* creates, for the first time, a distinction between a primary residential line and additional (*i.e.*, secondary) residential lines for the purposes of assessing interstate access charges. Under the rules adopted in the *Access Charge Reform Order*, a higher subscriber line charge (SLC) and presubscribed interexchange carrier charge (PICC) will be assessed on secondary residential lines than is assessed on primary residential access lines. Accordingly, the definition of primary residential line plays a pivotal role in the upcoming ILEC access filing that will be made to

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1 *Defining Primary Lines*, CC Docket No. 97-181, Notice of Proposed Rulemaking, FCC 97-316, released September 4, 1997.

2 *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, FCC 97-158, released May 16, 1997 ("*Access Charge Reform Order*")

implement the new access charge rules. Not only will the definition determine how the multi-level residential SLCs and PICCs will be applied, but, also, the definition will affect, to a limited extent, the level of other access charges, particularly, the traffic sensitive carrier common line charge.

The *Access Charge Reform Order* made significant and fundamental changes to the access charge rules that ILECs must follow. Concomitantly, implementation efforts are substantial. Apart from systems changes that are necessary, personnel must be trained in the new access charge structure so that the appropriate charges can be assessed. Further, the impact on end user customers, particularly residential subscribers, of the rule changes complicate the notification requirements that are attendant with a tariff filing. These implementation efforts require a substantial lead time before actual implementation. Until the Commission establishes the definition of primary line, the new access charge rules that are dependent on this definition cannot be properly implemented. It will take at least six months from the release of a Commission Order promulgating the primary line definition to complete all of the necessary implementation steps.

Even if the Commission concludes this proceeding quickly, the Commission's order cannot be taken into account for a January 1, 1998 implementation date. A particularly unsettling aspect of a January 1 implementation date is the customer confusion, particularly with residential end users, that will likely occur.

The public interest is not served by proceeding with a January 1, 1998 implementation date for secondary residential line SLCs and PICCs that are different from primary residential lines when it is known in advance that any rules adopted in this proceeding cannot be implemented by that date. Since the inception of the access charge regime, the Commission has never intentionally embarked upon an approach that would engender substantial customer confusion and disruption.

Yet, such is the likely result, unless the Commission initiates some measure to prevent these consequences from occurring. The Commission should consider the negative consequences that are certain to flow from the current implementation schedule and take mitigating steps. One such action would be to continue to treat all residential lines alike until after the Commission issues an order in this proceeding.[3] ILECs could then be given 6 months from the release date of the Commission's Order to implement the secondary line SLC and PICC based on the Commission's primary line definition. The Commission should take such a step immediately to ensure that the timely filing of tariff revisions implementing other aspects of the *Access Charge Reform Order* is not jeopardized.

In accordance with the directions set forth in the *Notice,* these comments identify the specific portion of the *Notice* to which the comments are being responsive.

## II. DISCUSSION

### A. Defining Single-line Business Lines And Primary Residential Lines (Notice, III.A)

As the Commission observes, prior to the *Access Charge Reform Order*, the access charge rules distinguished between multi-line and single-line business users for the purposes of applying SLCs.[4] The *Access Charge Reform Order* continues the single/multi-line distinction for applying business line SLCs and also employs the distinction with regard to the application of PICCs. In this proceeding, the Commission solicits comments on whether the existing definition of a single-

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[3] The Commission has the authority to issue an order, *sua sponte*, that waives the effective date of the secondary line SLC and PICC.

[4] *Notice* at ¶ 5.

line business line set forth in Part 69 should be altered.[5] BellSouth believes that the definition should not be changed.

Section 69.104(h) provides that "[a] line shall be deemed to be a single line business line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company."[6] The rule recognizes that whether an end user is a business user or residential user is a matter, in the first instance, to be determined by the state regulatory commissions and the local exchange tariffs. The Commission has followed this policy for more than ten years without incident and should continue to do so.

The definition has proven to be a workable definition. The ILECs, having operated under the rule since the implementation of SLCs, are familiar with the rule. They and end users understand the rule which, in and of itself, is a tremendous benefit. No purpose would be served to disturb the *status quo.* To the contrary, changing the definition carries with it certain negative consequences. If the definition were altered, such alteration would undoubtedly lead to customer confusion. There is nothing apparent in the *Access Charge Reform Order* that would necessitate a change in the classification of a business end user. Further, changing the definition has the potential for increasing the costs of ILECs. Depending on the nature of the modifications, ILECs could be faced with having to change their systems, to retrain their personnel and to develop new procedures, none of which are a logical consequence of the *Access Charge Reform Order* because the single-line/multi-line distinction predate access charge reform.

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5 *Id.*

6 47. C.F.R. § 69.104(h).

The Commission seeks comment on whether maintaining the current definition would be preferable because ILECs could assess the correct SLCs and PICCs without regard to whether a customer receives service from another carrier.[7] In a competitive, multi-carrier environment, the current definition's approach of determining customer status based on the services obtained from the telephone company is appropriate. As the Commission notes, it has interpreted its Part 69 rules only to apply to ILECs. In this circumstance, the ILEC should determine the applicable charges pursuant to these rules based on the services it provides. This is the competitively neutral result. To do otherwise would mean that an ILEC's charges would be dependent on a competitor's actions which is an invitation to competitive mischief.

Furthermore, if the Commission attempted to adopt a definition that would tie the application of subscriber line charges to the aggregate number of services that a subscriber receives from all carriers, such an approach would necessitate the exchange of customer account information among carriers. Apart from the administrative difficulties and expense that such an exchange would entail, it would also involve, by regulatory fiat, that competitors share information that is without question confidential and competitively sensitive.

The Commission, instead, should strive for a definition that is workable and consistent with a multi-carrier marketplace. These characteristics are best served by the approach that has each ILEC apply subscriber line charges based on the services it provides.

The Commission also solicits comments whether a subscriber with a single line in each of two locations should be considered a single-line business. From the perspective of a workable definition in a multi-carrier environment, the Commission should not interpret its rules to place

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7 *Notice* at ¶ 5.

ILECs at a competitive disadvantage vis à vis its competitors. Thus, where multiple locations are involved (*i.e.*, multiple serving addresses), it is appropriate that each location should be evaluated separately for the purposes of determining the applicability of subscriber line charges. To do otherwise in circumstances where single lines are provided to multiple serving addresses would mean that the Commission's rules provide competitors with an arbitrage opportunity. Competitors could undercut an ILEC at both locations by simply not assessing multi-line charges and, instead, assessing single-line charges.[8]

The Commission should likewise adopt a definition of primary residential line that has the same characteristics as the definition for single-line business. In other words, the definition should be workable in a multi-carrier environment. The definition should not result in complex administrative rules that will burden the ILEC and irritate the consumer. The definition should be simple to understand and easy to administer. A primary residential line definition can be developed that satisfies these characteristics.

As in the case of single-line business lines, the starting point should be the local exchange tariffs. Before a line can be considered as a primary residential line, it must be a service provided by the ILEC at a rate that is described in the local exchange tariff as a residential rate. Like business lines, the classification of service as residential is a matter that is properly determined by the state commissions through their oversight of local exchange tariffs.

There are additional components of the primary residential line definition. Primary residential lines should also be defined in terms of the subscriber of the service. The subscriber

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[8] Not only does the competitive LEC gain an unfair competitive advantage, it also could potentially gain universal service support for lines where such support would be denied to an ILEC.

would be the person actually responsible for the payment of the bill. Including this dimension in the definition would mean that every subscriber to basic residential telephone service could obtain a primary residential line, an important universal service consideration.

In addition, the primary residential line should be defined in terms of the serving address of the subscriber for the service provided by each telephone company. Thus, where a telephone company provides a single residential exchange service to a subscriber at a serving address, then that line would be a primary residential line. If the same subscriber obtained more than one line from the same telephone company at the same serving address, each additional line would be considered a secondary line. If different subscribers obtained one line at the same serving address from the same telephone company, then each subscriber would have a primary line.[9]

This definition has two very significant attributes: (1) it can be administered by the ILEC and (2) it minimizes artificial arbitrage opportunities that might otherwise arise. The definition is consistent with the way in which telephone service is provided to customers and, if adopted, can be implemented. Nevertheless, it must be recognized that because the categorization of residential lines into primary and secondary is a new regulatory requirement (there is no business or market need), information regarding the quantity of primary lines based on this definition is not available. While such information would be interesting, the quantity of lines under a given definition should not be determinative regarding the appropriateness of the definition.

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[9] If a subscriber had two lines at two different serving addresses, then each line would be considered a primary line.

### B. Identification of Primary Residential Lines (Notice, III.B)

If the Commission were to adopt the primary line definition proposed by BellSouth, each telephone company would have the information in its records to determine the appropriate application of subscriber line charges. Thus, BellSouth's definition avoids the competitive pitfalls associated with other definitions that would attempt to take into account the services provided by multiple carriers. A definition of primary line that attempts to take into account services provided by multiple carriers creates opportunities to game the process by competitors of the ILECs, since it is only the ILECs charges that are affected by the definition. Given that the access charge rules only apply to ILECs, the charges an ILEC assesses to its customers should not be dependent on the activities of a competitor.

Apart from eliminating the opportunities for competitive mischief, BellSouth's definition would also obviate the need for customer certification procedures. Substantial benefits accrue without customer certification. Indeed, the Notice recognizes the trap that is created when asking a user to respond to specific questions, the answers to which affect the charges that he will be assessed. Further, competition simply makes it impractical to build a system based on customer certification. Every time the customer changed its service provider or added additional services, he would have to re-certify or change his certification (depending upon the customer's choice). Hence, a customer's decision to switch local exchange carriers would bring with it a regulatory penalty of certification. The certification process could have a chilling effect on competition. At a minimum, it would make the competitive process more cumbersome.

Because BellSouth's primary line definition is based on the services an individual carrier provides, it would be unnecessary for resellers to report lines to the ILEC. Furthermore, as a

practical matter, there is no means by which ILECs could identify and track resellers' lines as primary or secondary lines. The reseller will assign the billing identifier (*i.e.*, primary or secondary line) of the line, not the ILEC. Further, if the reseller uses the ILEC's OSS systems, the ILEC will not be aware that the reseller has established a new account or changed the billing identifier on an existing line.

If, on the other hand, the Commission required resellers to exchange information with the ILEC, such exchange of information would appear inconsistent with Commission's expressed views that competitor's access to an ILEC's OSS systems is essential to competition. OSS access enables resellers to conduct their business and compete with ILECs without involvement of the ILEC. The independence that OSS access provides competitors would be diminished if resellers would have to exchange information with ILECs.

Without question, the definition of a primary line that is ultimately adopted by the Commission will affect the steps that will have to be taken to identify primary lines. Irrespective of the definition of primary line, the Commission is correct that a national database is not necessary to implement the changes to the access charge rules. A national database is impractical. It would be costly to develop, implement and maintain. Further, there would be innumerable complexities in the database's ongoing administration. There simply is no benefit to be gained from a database that would justify the cost.

The Commission solicits comments concerning privacy issues that might be raised under a self-certification program. The Privacy Act[10] imposes certain requirements if the Commission maintains a system of records. If the Commission intends to use and control the records, it is

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[10] 5 U.S. C. § 552(a).

conceivable that requirements of the Privacy Act can be triggered. Such a prospect highlights a deficiency in an approach that requires information to implement the new access charge rules that is outside the carriers' own records.

Nevertheless, if the Commission were to pursue a definition that required customer certification, it would appear that a program could be developed that would not implicate the Privacy Act. It would be essential that the records created from the certification process become records of the carrier, for the use of the carrier to apply appropriate service rates.

The Commission also questions whether the information provided through the customer certification process would be Customer Proprietary Network Information (CPNI) subject to the limitation of Section 222 of the Communications Act.[11] In BellSouth's view, the information that would be provided by the consumer would not fall within the definition of CPNI. Even if the customer certification information were deemed to be CPNI (which it is not), that information could be used by the carrier or shared with the Commission or its designate for the purpose of billing appropriate SLC and PICC charges, without customer approval.[12]

Rather than conflicting with privacy expectations, a certification process more likely will conflict with consumer's market expectations. Competition should bring with it consumer choice which should mean that such choice could be exercised freely and easily. The certification program would be an obstacle to the consumer's exercise of the choices competition affords. Potentially worse is that competition would be viewed as the cause of the bureaucratic collection

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11 47 U.S.C. § 222.

12 See 47 U.S.C. § 222(d)(1).

of information. BellSouth's proposed definition of primary line, however, would avoid these potential negative consequences.

### C. Verifying Primary Residential Line Information (Notice III.C.)

If the Commission adopts a workable approach to defining a primary residential line, such as that suggested by BellSouth, the verification of the number of primary lines becomes simple, manageable and achievable. For example, BellSouth's definition is verifiable from the business records that it maintains in the normal course of providing telephone service. Further, the parameters of the definition parallels that of the definition for single-line business lines. There has been no difficulty in implementing the single-line business line definition and no question regarding the accuracy of the assessment of SLCs based on that definition.

In contrast, should the Commission adopt a definition of primary lines that can be "gamed", the verification process undoubtedly would also become part of the gaming process. This is particularly so because the focus of the verification proposed in the *Notice* is only upon the ILECs. Yet, the definition of primary line being considered by the Commission is one in which the action of an ILEC's competitor would influence, if not determine, the ILEC's compliance with the access charge rules. It is readily apparent that such an approach would be biased against an ILEC and lack competitive neutrality.

It is imperative that the concept of verification should not become an excuse for heavy handed regulation. Instead, the Commission's focus should be on adopting a definition that will minimize concerns and the need for verification. BellSouth has set forth such an approach.

The Commission's inquiry as to whether a model can be used to verify primary lines is both misdirected and premature. The Commission is misdirected in looking at the Hatfield model

as a potential starting point for its inquiry. The Hatfield model is not particularly accurate in estimating the costs which the model was purportedly designed to estimate. It is farfetched to even assume that it might have some usefulness to estimate parameters that were never contemplated in the design of the model. Further, to consider the issue of modeling at this time is placing the proverbial cart before the horse. It is impossible to evaluate the usefulness of any model before the definition of a primary line is finalized. Indeed, until the Commission settles on a definition, it is unclear why a model would be necessary or appropriate as a verification technique.

### D. Enforcement (Notice, III.D)

The Commission has adequate authority to enforce its access charge rules. The Commission's rules and its authority extends to carriers. The Commission's authority over common carriers is quite broad. In contrast, the Commission's authority over end users is far more limited. Certainly, the PICC and SLC charges were established pursuant to the Commission's Title II authority. Nothing in Title II would give the Commission direct enforcement authority over an end user. Thus, if an end user provided a carrier with incorrect information, a carrier might, pursuant to its tariff or contract, disconnect service. The Commission, in its oversight role, could consider the carrier's disconnection policy as just and reasonable. Hence, the Commission's enforcement role with regard to an end user is indirect.[13]

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[13] It does not appear that the Commission could subject an end user to fines or forfeitures because such remedies are limited to violations of the Communications Act and the rules promulgated thereunder. There is nothing in the Communications Act that would authorize the Commission to establish rules compelling end users to report information.

### E. Consumer Disclosure (Notice, III.E)

Implementation of primary/secondary line SLCs will necessitate notifying consumers. BellSouth, however, does not support a uniform disclosure statement. The lengthy notification statement proposed by the Commission cannot be effectively or efficiently communicated. Such lengthy and confusing statements will increase operating costs significantly by extending the service representative's contact time with customers. BellSouth has the experience and expertise to develop and implement its own notification statement. Accordingly, BellSouth should be able to prepare a disclosure statement for its customers. This is particularly important in a competitive environment wherein only the ILECs will be required to issue such a notification. In a competitive environment, it seems highly inappropriate to carry on a debate in a regulatory forum wherein BellSouth's competitors have the opportunity to shape the way in which BellSouth communicates with its customers.[14]

## II. CONCLUSION

In adopting a primary line definition, the most important consideration for the Commission should be to insure that the definition is workable in a multi-carrier environment. To this end,

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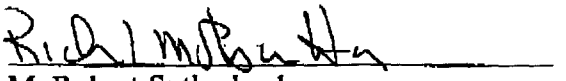
[14] If the Commission wants to provide guidance as to the information to be contained in the notification it can do so without prescribing the specific notice.

BellSouth proposes a definition that can be implemented and administered in a manner that is consistent with the competitive market.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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